SUPREME COURT OF INDIA

Hirabai

Vs.

Municipal Committee, Dhamangaon

C.A.Nos.600 and 679 of 1964

(K. Subba Rao, Raghubar Dayal, J. R. Mudholkar, R. S. Bachawat and V. Ramaswami, JJ.)

26.03.1965

JUDGEMENT

MUDHOLKAR, J.:

1. This judgment will also govern Civil Appeal No. 679 of 1964 since common questions of law arise in both the appeals. For illustrating the points which arise for consideration in these appeals we will set out briefly the facts pertaining to C. A. 600 of 1964.

2. The appellant (hereinafter referred to as the Company) is a private limited company having its registered office at Calcutta and a branch office at Dhamangaon which was formerly in the Province of Central Provinces and Berar but is now in the State of Maharashtra. The company owns a ginning factory at Dhamangaon. The Notified Area Committee of that place imposed, under S. 66(1) (b) of the Central Provinces Municipalities Act, 1922 (hereinafter referred to as the Act) as applied to Berar a tax at the rate of one anna per Boja of ginned cotton and one anna per bale of pressed cotton as from December 22, 1936, on which date a notification sanctioning the imposition under S. 241(1) of the Act was published in the official Gazette by order of the Government of the Province. The

Notification in question runs as follows:-

"No. 7911-3242-M-VIII.- In exercise of the powers conferred by clause (a) of Sub-section (1) of section 241 of the Central Provinces Municipalities Act, 1922 (C. P. Act II of 1922) as applied to Berar, the Local Government is pleased to confirm the following rule made by the Notified Area Committee, Dhamangaon, in the Amravati district, under clause (b) of sub-s. (1) of section 66 of the said Act, for imposing a tax on persons carrying on the trade of ginning and pressing cotton by means of steam or mechanical process within its limits:-

RULE

The committee shall levy from all persons carrying on within its limits the trade of ginning or pressing cotton into bales by means of steam or mechanical process a tax at the following rates from the date of the publication of this notification in the Central Provinces Gazette:-

(a) For each bojha of 392 lbs. ginned- 1 anna.

(b) For each bale of 392 lbs. pressed- 1 anna.

By order of the Government,

(Ministry of Local Self-Government).

Sd/- R. N. Banerjee,

Secretary to Government, Central Provinces."

3. The Notified Area Committee of Dhamangaon decided to raise the rate from 1 anna per bojha and 1 anna per bale to four annas per bojha and four annas per bale. Soon after this decision it caused the following notification to be published in the official Gazette on April 10, 1941. The Notification runs thus:-

"The following amendment to the rule for imposition of the tax by the Municipal Committee, Dhamangaon, in the Amraoti district, under Cl. (b) of sub-section (1) of section 66 of the Central Provinces Municipalities Act, 1922 (II of 1922), as applied to Berar, on persons carrying on the trade of ginning and pressing cotton by means of steam or mechanical process within its limits, published in the Central Provinces and Berar Gazette Notification No. 7911-3242-M/VIII dated the 22nd December, 1936, is published for the information of the public, the same having been previously published as required by sub-section (3) of section 68 of that Act, and in exercise of the powers conferred by sub-section (7) of section 68 of that Act, the municipal committee directs that

the said amendments shall come into operation on the 1st August, 1941:-

AMENDMENT

For the figure and the word '1 anna' occurring in clauses (a) and (b) of the rule, the figure and word '4 annas' shall be substituted.

Sd/- B. S. Mundhada,

President, Municipal Committee.

No. 2418-M-XIII."

4. Certain rules were framed by the Government for the assessment and collection of tax which were also published on December 22, 1936. These rules were, however, amended by the Local Government and the amended rules were published in the Gazette on July 30, 1941. It is these latter rules which are now in force. Consequent upon the amendment of the rules the appellant in the two appeals and the proprietors of the ginning factory in Dhamangaon have been paying these taxes at the new rate of 4 annas per bojha and 4 annas per bale.

5. It may be mentioned that in December 1951, the Municipal Committee, Dhamangaon, which by then had replaced the Notified Area Committee proposed to raise the tax from four annas to one rupee per bojha and per bale but eventually dropped the proposal. Apparently being alarmed at the abortive attempt of the Municipal Committee to raise the tax further, the appellant and other factory owners in Dhamangaon instituted suits for recovery from the Municipal Committee of excess tax paid by them within 3 years of the dates of the respective suits. The Company claimed refund of Rupees 12,511.66 on the ground that it was recovered from it illegally by the Municipal Committee and paid by it under a mistake. The amount has been computed by them thus: Rs. 6,905-14-6 recovered from them in respect of ginned cotton between 29th March, 1949 and some date in the year 1952 plus Rs. 8,048-8-0 in respect of pressed cotton recovered from them during the same period less Rs. 3,738-9-6 which was legally due from them thus totalling to Rs. 11,215-13-0. To this they added Rs. 1,295-9-6 as interest by way of damages on the aforesaid amount at the rate of 9 per cent p.a. In the plaint it was contended by the Company that after the coming into force of S. 142A of the Government of India Act, 1935 (which came into effect from 1st April, 1939) till January 25, 1950 a tax on trade, profession or calling in excess of Rs. 50 per annum could not be imposed either by a Provincial Government or by a Local Body. Nor again, could an existing tax on trade,

profession or calling be raised further so as to exceed Rs. 50 per annum. The Company further pointed out that after the coming into force of the Constitution the upper limit of the tax was raised to Rs. 250 per annum and that as the Company was already paying more than this amount per year even at the rate of one anna per bojha and one anna per bale recovery from them at the enhanced rate of 4 annas was illegal with effect from April 1, 1939. The Municipal Committee contended in its written statement that the provision of S. 142A of the Government of India Act and Art. 276 of the Constitution which limit the tax on professions, trades or callings or employments to Rs. 50 and Rs. 250 per annum, respectively do not apply to a case such as the present where there is no imposition of a new tax but only an enhancement of the rate of an existing tax. It further contended that the tax in question at the rate of 4 annas per bojha and 4 annas per bale was in existence when Art. 276 came into force and is saved by that Article. According to the Committee, the Company is not entitled to claim back the amount paid by it under S. 72 of the Indian Contract Act or the general law. This contention, however, was negatived by the trial Court and does not appear to have been reiterated before the High Court. Nor again was it pressed before us by Mr. Viswanatha Sastri who appears for the Municipal Committee. The principal contention which was pressed before the trial Court and raised before the High Court was that the Company's suit was bad for non-compliance with the requirements of S. 48 of the Act and that is the point which we have to consider in this appeal.

6. Section 48 of the Act reads thus:

"(1) No suit shall be instituted against any Committee or any member, officer or servant thereof or any person acting under the direction of any such committee, member, officer or servant for anything done or purporting to be done under this Act, until the expiration of two months next after notice in writing stating the cause of action, the name and place of the abode of the intending plaintiff and the relief which he claims, has been, in the case of a committee, delivered or left at its office, and, in the case of any such member, officer or servant or person as aforesaid, delivered to him or left at his office or usual place of abode, and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action."

7. Mr. Patwardhan for the appellant contends that this was a case of recovery of an illegal tax and, therefore, a claim for its refund fell outside the provisions of S. 48 of the Act. In support of his contention he relied upon a number of decisions and we will proceed to examine them.

8. The first of these cases is Municipal Committee, Karanja v. New East India Press Co. Ltd., Bombay, ILR 1948 Nag 971: (AIR 1949 Nag 215). That was also a case where enhancement of a tax was made by the Municipal Committee of Karanja after March 31, 1939, in excess of Rs. 50 per

year payable by one person. There, a Division Bench of the High Court held, that the enhancement was in contravention of S. 142A of the Government of India Act, 1935 and was illegal, that a suit for refund of the tax is maintainable by the person who has paid the tax and that such a suit is not barred by the provisions of S. 48, 83 or 84 of the Act. The relevant observations of Bose, A. C. J. (as he then was) who delivered the judgment are as follows:

"It was then argued that the Civil Courts have no jurisdiction because of sections 83 and 84 of the Central Provinces Municipalities Act as applied to Berar. It was said that that Act provides for remedies in cases of wrongful recovery of taxes. Therefore, the jurisdiction of the civil Courts is barred.

A large number of cases have dealt with this question but we need consider only two of the latest decisions. In District Council, Bhandara v. Kishorilal (Civil Revision No. 220 of 1946, dated 25-6-1948): (AIR 1949 Nag 190), one of us (Bose, J.) held that provisions corresponding to Ss. 83 and 84 come into play only when the Municipal Committee acts within the scope of its authority, that is to say, when it is acting or purporting to act under the Municipalities Act. It is pointed out there in respect of this very section of the Government of India Act, S. 142-A, that when a Municipality is prohibited by law from imposing a tax in excess of a certain amount then it cannot be said to be acting either under the Act or purporting to act under the Act if it exceeds that amount, and in such a case the jurisdiction of the Civil Courts is not barred. Here again we may refer to the fact that in the Privy Council case Radha Kishan Jaikishan (Firm) v. Municipal Committee, Khandwa, 30 Nag LR 121: (AIR 1934 PC 62), this objection does not appear to have been taken. It is hardly likely that it would have been omitted had there been any force in the contention.

In the present case, as in District Council, Bhandara v. Kishorilal, (AIR 1949 Nag 190), the Municipality is seeking to recover sums which the law has prohibited it from taking, in the shape of taxes. Accordingly, as it is acting wholly without jurisdiction, the claims lie and are not barred by reason of Ss. 83 and 84.

Then it was stated that the claims are barred by S. 48 of the Municipalities Act. There again the same considerations apply. Section 48 comes into play only when the act is done or is purported to be done under the Municipalities Act.

As we have said, that is not the case here because its action is something which is prohibited by law, and so wholly beyond its jurisdiction, and, therefore, S. 48 does not apply. The distinction between a case where S. 48 applies and a case where it does not is clearly shown in Amraoti Town Municipal Committee v. Shaikh Bhikan, ILR (1939) Nag 216 at pp. 219, 220: (AIR 1938 Nag 455 at p. 457)".

Kishorilal's case, C. R. No. 220 of 1946: (AIR 1949 Nag 190), to which reference is made in the above quotation is a decision of a Division Bench upon a reference made by Bose, J. and which, though rendered earlier, has been reported in ILR (1949) Nag 87. In that case a tax imposed by the District Council, Bhandara, under a similar provision of the Local Self-Government Act, 1920, at the rate of three pies per khandi on persons carrying on trade of husking, milling or grinding of grains was raised by it to one anna as from April 1, 1942 with the sanction of the Provincial Government. It was contended on behalf of the respondent that the recovery was illegal. Since the matter involved the interpretation of S. 142A of the Government of India Act, 1935, Bose, J., acting under one of the rules of the High Court referred it to a Division Bench. This is what the Division Bench held:

"We are clear that the tax in question is a tax which can be so termed. This was in fact conceded in the Court below and the contention raised before us that the persons who gave grain to Kishorilal for grinding and not he were the traders concerned was plainly devoid of force. He had a mill and with it carried on the trade of milling grain. The tax in question was recovered from him because of this and it was one of the taxes hit by S. 142-A of the Government of India Act, 1935, and the Professions Tax Limitation Act, 1941 (XX of 1941)."

When the matter went back before Bose, J., it was contended on behalf of the District Council that the suit was barred altogether by the provisions of S. 71 and that the provisions of S. 73 make the issue of a notice by the District Council a pre-condition for the institution of a suit of the kind before him. Reliance was placed on a certain rule framed under S. 79 (1) (xxix) of the Central Provinces Local Self-Government Act, 1920. After quoting S. 71 and the rule relied on the learned Judge observed:

"It will be observed that both S. 79 and the rule are confined to orders and decisions given under the Act. It is impossible to say that an order which contravenes the law or is made in the face of an express statutory prohibition can be said to be under the Act. The words "purporting to be given" or "made under the Act" are not present in this section and so the difficulty which arises regarding the other point is not present here. I hold that the suit is not incompetent on this score."

9. Pointing out that the other question urged before him was more difficult the learned Judge said that his conclusion was that what was done in the case was not "under the Act" and, therefore, what remained for consideration was whether it was "purported to be done" under the Act. He came to the conclusion that what was done was not "purported to be done under the Act" and expressed himself thus:

"Now this expression has recently been interpreted by their Lordships of the Privy Council in H. H. B. Gill v. The King, AIR 1948. Nag 128, also in Hori Ram Singh v. The Crown, 1939 FCR 159: (AIR 1939 FC 43), of which their Lordships approved. The question is a difficult one and as

Varadachariar, J. observed in the Federal court decision at p. 187 (of FCR): (at p. 56 of AIR), it is neither possible nor desirable to lay down any hard and fast rule. The question is substantially one of fact and "must be determined with reference to the act complained of and the attendant circumstances." I think, however, that the following test which their Lordships of the Privy Council laid down concludes the matter so far as this Act is concerned. Their Lordships say: "A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty." Now I can understand it being said that an act which is within the scope of an official duty cannot be taken out of that category simply because it is carelessly or negligently performed, but I cannot see how an act which is expressly prohibited by law can be said to lie there. If a Magistrate directed to supervise a sentence of whipping duly imposed by a competent Court has the wrong man whipped by mistake or imposes more lashes than warranted, I can understand him being protected. He is there acting within the scope of his duty. But if, instead of having the man whipped, he has him branded with a hot iron he would not, in my opinion, be able to claim the protection. In the same way I cannot see how a Municipal Committee can be said to be acting 'under the Act' when it does that which is expressly prohibited by the Legislature. Say it purported to tax salt. Its action would not be covered by S. 73 because the Constitution Act makes that an exclusively Central subject. Say also a municipality attempted to tax marriages or births, that would be completely beyond its province and it could not be heard to say that because it has been given certain limited powers of taxation, therefore, it 'purports to act' under the Act whatever the nature of the tax it attempts to impose. In the same way, if the Legislature limits the authority of the Committee to a maximum of Rs. 50 I do not think it can be said to purport to act within the scope of the Act if it travels beyond its limited provisions."

10. A reference may be made to the decision in ILR (1939) Nag 216: (AIR 1938 Nag 455), which apparently takes a contrary view. There Niyogi, J., sitting singly has held that a suit against a municipal committee for the recovery of a tax illegally collected is governed by S. 48 of the Central Provinces Municipalities Act and, is, therefore, barred by limitation if not filed within six months of the date of the collection of the tax. That case is, however, distinguishable in that there was no prohibition to the levy of the tax and all that had happened was that proper procedure had not been followed in imposing the tax. This was thus a case of something purporting to be done under the Act but not done strictly in accordance with the provisions. That such a case would squarely fall within the ambit of S. 48 cannot be questioned. But the point is whether what was done by a local body under the colour of an Act can be regarded as something purported to be done under the Act even though neither the local body nor even the State Legislature has the power to do what was in fact done.

11. The next case referred to was Gajadhar Hiralal v. Municipal Committee, Bashim, ILR 1958 Bom 625: (AIR 1958 Bom 378). That was also a case in which a tax on bojhas and bales of ginned cotton was raised from Re. 0-2-3 per bale to Re. 0-4-0 per bale and the learned Judges held, following the decision in the New East India Press Co.'s case, ILR (1948) Nag 971: (AIR 1949 Nag 215) (supra) that the enhancement was ultra vires Art. 276 of the Constitution. The other question did not arise for consideration in this case. This decision is, therefore, of little assistance to us, because it is not contended before us that the enhancement of the tax is valid.

12. There is, however, another decision in the same volume at p. 483 (of ILR (1958) Bom): (AIR 1958 Bom 487) (Municipality of Chopda v. Motilal Manekchand) which is relevant for consideration in this appeal. In that case a Division Bench, while pointing out that the particular tax which was levied by the Municipality was in substance a tax on trade within the meaning of Art. 276 of the Constitution and being in excess of Rs. 250 p.a. was beyond the competence of the Municipality, held that a suit for its refund beyond the time prescribed by rules was barred by limitation. According to the learned Judges the levy of the tax though beyond the authority of a Municipality was "an act done in pursuance or execution or intended execution of the Bombay District Municipal Act" and was merely a wrongful act as distinguished from an ultra vires or illegal act. In coming to this conclusion they followed a previous decision of the High Court in Jalgaon Borough Municipality v. Khandesh Spinning and Weaving Mills Co. Ltd., 55 Bom LR 65: (AIR 1953 Bom 204). Incidentally we may mention that an appeal was brought before this Court from that part of the decision in Municipality of Chopda, East Khandesh v. Motilal Manakchand Press Factory, Chopda, C. A. No. 168 of 1961, dated 11-3-1962 (SC), which held that the levy was unconstitutional.

13. Ayyangar, J., who spoke for the Court has stated towards the end of the Judgment as follows:-

"In the circumstances the correctness of the decision of the High Court in holding the impugned levy to be a tax on 'callings or employments' and, therefore, subject to a pecuniary limit of Rs. 250 per year does not really arise for consideration. The respondents had in their plaint, no doubt, challenged the entirety of the levy and sought relief on that basis, but they had, however, pleaded in the alternative that the tax might be held to be one on 'a trade, etc.' and, therefore, within Art. 276 (2) and claimed relief on this footing in the alternative. The learned Civil Judge had accepted this alternative contention and had granted them a decree on that basis and the respondents had not challenged the correctness of that decision by preferring an appeal; and the learned Judges of the High Court had accepted this view of the nature of the levy. We, however, consider it proper to add that there is considerable force in the opinion expressed by the High Court that the tax in question, at the date when the same was challenged, being a levy imposed on persons carrying on the business of pressing cotton, was a tax on 'professions, trades, callings, or employments' and that the learned Judges of the High Court came to a correct conclusion that the respondents were entitled to the declaration which was granted as regards the maximum amount of the tax that could be levied from the respondents."

14. In Jalgaon Borough Municipality's case, 55 Bom LR 65: (AIR 1953 Bom 204) (supra) on which the High Court relied in Motilal Manekchand's case, ILR (1958) Bom 483: (AIR 1958 Bom 487), what had happened was this: The Municipality acting under S. 73 (iv) of the Bombay Municipal Boroughs Act, 1925, levied octroi duty on fuel oil or furnace oil under certain rules and by-laws framed by it with the sanction of the Government which provided for the levy of an octroi duty on various articles including 'oils used for machinery.' It was found that the Municipality was not entitled to levy any octroi duty on fuel oil or furnace oil which was not compromised within the items enumerated in the octroi rules and bye-laws. The respondent who had paid the tax instituted a suit for its recovery. One of the questions which arose for consideration was whether the provisions

of S. 206 of the Bombay Municipal Boroughs Act, 1925, corresponding to those of S. 48 of the Central Provinces and Berar Municipalities Act, 1922, applied to the case. The learned Judges of the High Court held that what the municipality did was not an act done in pursuance of the Act, but it was an act which it purported to do in pursuance of the Act and that, therefore, is action was well within the terms of S. 206. In the course of the judgment Bhagwati, J., observed that the acts which fell within the category of those "done or purporting to have been done in pursuance of this Act" could only be those which were done under a vestige or semblance of authority or of a shadow of right. If an act was outrageous and extraordinary or could not be supported at all, not having been done with a vestige or semblance of authority, or a shadow of right invested in the party doing that act, it would not be an act which is done or purported to have been done in pursuance of the Act. The distinction is really between ultra vires and illegal acts, on the one hand, and wrongful acts, on the other-wrongful in the sense that they purport to have been done in pursuance of the Act; they are intended to have been done in pursuance of the Act if they are done with a vestige or semblance of authority, or a sort of a right invested in the party doing those acts. The learned Judge then referred to certain decisions and said that under S. 73 (iv) of the Act power was given to the Municipality to impose octroi duty on articles and goods imported within its jurisdiction. What had happened there was that the defendants, on the interpretation which they gave to the words "oils used for machinery", did something which ultimately, on an adjudication in that behalf, the Court found to be wrong. By acting in that way what the Municipality purported to do could not be said to be illegal or outrageous and extraordinary or done without having any vestige or semblance of authority, or without even a shadow of a right.

15. Apart from the fact that much of what was said in this case is opposed to a recent decision of this Court to which we will presently make a reference certain observations made by Bhagwati, J., in fact lend support to the argument advanced before us by Mr. Patwardhan. The observations we have in mind are to the effect that where a municipality, not having the power to levy a particular tax at all, either wholly or in regard to some classes of goods, had purported to levy the same it would certainly be an act which was "outrageous and extraordinary, or done without having any vestige or semblance of authority or without even a shadow of a right". Here, the overstepping of its authority by the Municipality consists not in the matter of the selection of a class of goods but of that of the rate at which it has levied and collected a tax. It has levied and collected a tax beyond constitutional limits. Therefore, to the extent it has done so the tax could properly be said to have been levied without a vestige or semblance of authority or even of a shadow of right.

16. We may now refer to the recent decision of this Court in Poona City Municipal Corporation v. Dattatraya Nagesh Deodhar, C. A. No. 582 of 1961, dated 5-5-1964: (AIR 1965 SC 555). That was a case in which the Municipal Corporation had imposed a tax on the refund of octroi duty collected by it on goods imported within the Municipal limits of the city. Its practice was to deduct the tax from the amount which it was required to refund and pay the person entitled to the refund only the balance. A suit was instituted by the respondents for refund of the amount illegally deducted by the Corporation from the octroi refund made by the Corporation to the respondents. It was contended on behalf of the Corporation that the deduction made by it was valid and that the suit was barred by limitation. This Court upheld the contention of the respondents that the Corporation had no power to impose the tax and that in fact there was a prohibition against the imposition of such a tax by the Corporation. On the plea of limitation, which was founded upon the provisions of S. 487 of the

Bombay Act which are almost the same as those of S. 48 of the Act with which we are concerned, this Court observed:

"The benefit of this section would be available to the Corporation only if it was held that this deduction of ten per cent was 'an act done or purported to be done in pursuance or execution or intended execution of this Act.' We have already held that this levy was not in pursuance or execution of the Act. It is equally clear that in view of the provisions of S. 127 (4) (to which we have already referred) the levy could not be said to be 'purported to be done in pursuance or execution or intended execution of the Act.' For, what is plainly prohibited by the Act cannot be claimed to be purported to be done in pursuance or intended execution of the Act."

Sub-section (4) of S. 127 of the Act to which this Court has referred is in the following terms:

"Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution."

It is pertinent to bear in mind that the conclusion of this Court on the question whether the act was "done or purported to be done" under the Act was not based solely on this provision and reliance was placed upon it as affording additional support to the conclusion already arrived at. It seems to us that this provision was enacted by way of abundant caution. For, the Constitution is the fundamental law of the land and it is wholly unnecessary to provide in any law made by the Legislature that anything done in disregard of the Constitution is prohibited. Such a prohibition has to be read in every enactment. This decision does appear to conclude the matter.

17. During the pendency of the suit before the trial Court the appellant had preferred a writ petition before the High Court at Nagpur in which it contended that the notification of April 10, 1941, enhancing the tax from one anna per bojha and one anna per bale to four annas per bojha and four annas per bale was illegal and ultra vires and should, therefore, be quashed. This petition was granted by the High Court on April 12, 1955. There was, therefore, a direct decision before the trial Court and the appellate Court which though it could not be treated as res judicata was binding on those Courts and was treated as such by them and it is perhaps because of this that it was not sought to be urged on behalf of the Municipal Committee when the second appeal was argued before the High Court that the notification is valid and, therefore, the Municipal Committee could recover the tax at the enhanced rate. Though Mr. Vishwanatha Sastri did say that the decision of the High Court is not res judicata he did not directly challenge its correctness. What he argued was as follows:

18. The levy of a tax on professions, trades, callings, etc., was within the power of the Provincial Legislature and is now within the power of the State Legislature. It could in the past and can even

now levy such a tax at the rate of four annas per bojha and four annas per bale, that both under S. 142-A of the Government of India Act and Art. 276 of the Constitution the Municipal Committee could collect such a tax up to the constitutional limit (which was formerly Rs. 50 p.a. and is after the coming into force of the Constitution Rs. 250 p.a.). The mischief, according to him, is not in the levy but in the realisation of an excess over the limit. To put it differently, the ban is not upon the rate of tax but upon excess collection thereof. Therefore, the collection of a tax above the constitutional limit was not without jurisdiction but only illegal or irregular. A suit by an assessee to recover the amount paid by him in excess of the constitutional limit would, therefore, be in respect of a matter "purported to be done" under the Act and the provisions of S. 48 of the Act would apply to it. Further according to him every suit against a Committee for anything done or purported to be done under the Act must comply with the conditions laid down in the section. He points out that the assessment of the tax was made by an authority competent to make an assessment, that in making it the authority proceeded in accordance with the provisions of the Act and assessed the tax as authorised by Rules which had been sanctioned by the former Government of Central Provinces and Berar. So, even if it is assumed that any of the Rules were ultra vires and, therefore, the assessment and recovery of the tax was illegal, what the authority had done was something purported to be done under the Act. Some of these arguments were advanced in cases discussed earlier and rejected.

19. In support of his contention he placed reliance on the decisions in Richard Spooner v. Juddow, 4 Moo Ind App 353 at p. 379 (PC) and Dhondu Dagdu Patil v. Secretary of State, ILR 37 Bom 101 at p. 106. These cases were not pressed in aid in the decisions so far considered and we would deal with them now.

20. Before we deal with these cases it is necessary to point out the rationale upon which S. 142-A of the Govt. of India Act, 1935 was enacted and on which Art. 276 of the Constitution now rests. It is that the legislative spheres of the Provinces and the Centre came to be clearly demarcated in regard to items falling within Lists I and II of Schedule VII of the Govt. of India Act and now to those falling within the same lists of Schedule VII of the Constitution. Taxes on professions, trades, callings and employments are taxes on income and are thus outside the provincial/and now State-lists and belong exclusively to Parliament and before that to the Central Legislature. Yet under a large number of laws enacted before the Govt. of India Act, 1935 came into force, power was conferred on local Governments and local authorities to impose taxes on such activities. This was obviously in conflict with S. 100 of the Govt. of India Act. When this was realised S. 142-A was enacted by the British Parliament which saved the power conferred by pre-existing laws but limited the amount payable to Rs. 50 after 31st March, 1939. A saving was made, however, of pre-existing laws subject to certain conditions with which we are not concerned. The provisions of this section have been substantially reproduced in Article 276 of the Constitution with the modification that the upper limit of such tax payable per annum would be Rs. 250 instead of Rs. 50. A tax can be recovered only if it is 'payable' and it would be payable only after it is assessed. It is, therefore, futile to contend that the ban placed by the aforesaid provisions extends only to recoveries and not to an earlier stage.

21. Now coming to the cases, the first was one in which the question considered by the Privy

Council was whether the Supreme Court at Bombay was competent to entertain a suit for recovery of damages brought by one Hurkissondass Hurgovundass against the Collector of Bombay and others in respect of trespass and nuisance committed by certain officers of the Collectorate while purporting to execute a distress warrants issued against one Narrondass for non-payment of arrears of land revenue. Under the Letters Patent, dated Dec. 8, 1823 the jurisdiction of the Supreme Court was barred "in any matter concerning the revenue under the management of the said Governor and Council of Bombay, respectively. . . . . .or concerning any act done according to the usage and practice of the country, or the regulations of the Governor and Council of Bombay aforesaid." Similar provisions were contained in S. 8 of the Statute 21 Geo III., C. 70. The Supreme Court overruled the defendant's contention on the ground that what was due from the plaintiff was not revenue but a perpetual ground rent which was incapable of being enhanced and could not be regarded as revenue at all. After holding so Lord Campbell who delivered the opinion of the Judicial Committee observed:

"The point, therefore, is, whether the exception of jurisdiction only arises where the defendants have acted strictly, according to the usage and practice of the country, and the Regulations of the Governor and Council. But upon this supposition the proviso is wholly nugatory; for if the Supreme Court is to inquire whether the Defendants in this matter concerning the public revenue were right in the demand made, and to decide in their favour only if they acted in entire conformity to the Regulations of the Governor and Council of Bombay, they would equally be entitled to succeed, if the Statutes and the Charters contained no exception or proviso for their protection. Our books actually Swarm with decisions putting a contrary construction upon such enactments, and there can be no rule more firmly established than that if parties bona fide and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act. In this case it may well be that the warrant against the goods of Tookaydass did not authorise the taking of the goods of Hurgovindass, or even that Hurgovundass might not be liable for the arrears of 'quit rent' which accrued before he became owner of the house. Still the Collector was evidently of opinion, that a distress might be made for the whole of the arrears due, and that it was sufficient to introduce into the warrant the name of Tookaydass, in whose name the house continued to be registered. The other Defendant never could have doubted the sufficiency of the warrant. If Indian revenue-officers have fallen into a mistake, or without bad faith have been guilty of an excess in executing the duties of their office, the object of the Legislature has been, that they should not be liable to be sued in a civil action before the Supreme Courts." Later in his opinion Lord Campbell said:

"If it concerned the revenue, or was a matter concerning an act bona fide believed to be done according to the Regulations of the Governor and Council of Bombay, his (i. e., of the Judge of the Supreme Court) jurisdiction was gone, although prima facie it appeared to be a trespass over which his jurisdiction might be properly exercised." This case would have assisted Mr. Sastri only if what was done was something which could legally have been done by the Municipality but was wrongly done by it as, for instance, the collection of a lawful tax from a person other than the one from whom it was due. But this decision is no authority for the proposition that if the Collector recovered or tried to recover from a person a sum of money as arrears of land revenue even though it did not fall within the definition of revenue or tried to collect a sum of money which he was expressly prohibited by law from collecting, he would still be said to have purported to act under the revenue

law which empowered him to collect land revenue. If an act of trespass was committed in execution of a distress warrant for recovery of such monies, a suit for damages would not have been barred.

22. In the next case what the High Court was dealing with was the claim of the plaintiff against the Govt. for damages occasioned by the wrongful cancellation of his licence to sell liquor. The suit had been dismissed by the trial judge as barred by the provisions of S. 67 of the Bombay Abkari Act, 1878, firstly because the Collector had acted bona fide in pursuance of the Act and secondly because it was not instituted within four months from the date of the act complained of. The High Court upheld the dismissal of the suit and in the course of its judgment observed:

"It is quite true that the Collector's action is not strictly in conformity with the section which authorizes the revocation only on the actual conviction of the licensee. But the circumstances under which the Collector acted are so near the circumstances legally entitling him to act as he did that we feel bound to say the act was done in pursuance of the Statute. The law upon this point may be found stated in many cases, of which we may notice Hermann v. Seneschal, (1862) 32 LJ CP 43. In strictness, anything not authorized by a Statute cannot be said to be in pursuance of it, while if it is authorized by the Statute clearly it would need no other protection. But if effect were given to such a construction it would altogether do away with the protection intended to be given; accordingly the general principle is that if any public or private body charged with the execution of a Statute honestly intends to put the law in motion and really and not unreasonably believes in the existence of facts, which, if existent, would justify his acting and acts accordingly, his conduct will be in pursuance of the Statute and will be protected."

23. The learned Judges then referred to Spooner's case, 4 Moo Ind App 353 (PC) (Supra) also. Mr. Sastri laid particular emphasis on the concluding portion of the observations quoted above. This again, it may be said, is not a decision which is quite in point. There was no want of jurisdiction in the Collector to do what he did but there was only the absence of facts which, had they existed, would have given him power to do what he did. Cases of this type must be distinguished from those like the present in which we must imply a constitutional or statutory prohibition against the act done. Where such prohibition exists or can be implied, anything done or purported to be done by an authority must be regarded as wholly without jurisdiction and is not entitled to a protection of the law under colour of which that act was done.

24. It is true, as urged by Mr. Sastri, that it was within the competence of the respondent committee to raise the rate of tax from one anna to four annas per bojha and bale even after the coming into force of S. 142-A of the Govt. of India Act, 1935. The levy of tax at that rate cannot, therefore, be regarded to be beyond the jurisdiction of the respondent so long as the constitutional limit was not exceeded. What is, however, contended on behalf of the appellant is that the action of the Committee in compelling it to pay the tax in excess of the amount which was constitutionally recoverable from it in respect of any one year was ultra vires, that thereby the provisions of section 142-A have been transgressed and, therefore, this was a case of utilization by the Committee of the

provisions of the Act and the rules made thereunder for doing something which was prohibited by the Government of India Act 1935 and is now, by the Constitution. It is true that the Committee had jurisdiction to recover an amount up to the constitutional limit. But it cannot fairly be contended on its behalf that merely because of this, that the recovery by it of an amount in excess of the constitutional limit was only irregular or at the worst illegal. Where power exists to assess and recover a tax up to a particular limit and the assessment or recovery of anything above that amount is prohibited the assessment or recovery of an amount in excess is wholly without jurisdiction and nothing else. To such a case the Statute under which action was purported to be taken can afford no protection. Indeed, to the extent that it affords protection, it would be bad. But where, as here, the validity of a provision of a statute can be upheld upon a possible construction of that provision it would be the duty of the court to so construe it as to avoid rendering the provision unconstitutional and reject a construction which will invalidate the provision.

25. The final contention urged by Mr. Sastri is based upon the decision of the Privy Council in Raleigh Investment Co. Ltd. v. Governor General in Council, 74 Ind App 50: (AIR 1947 PC 78). His argument is that the Municipalities Act contains adequate provisions dealing with refund of taxes and that the provisions of S. 85(2) bar a suit for recovery of a tax wrongfully recovered by the Municipal Committee. It may be mentioned that the contention was not raised in the suit or in the grounds of appeal before the High Court and has not therefore been considered by it. It has been raised for first time in the statement of case. But the scope of an appeal cannot, even at the instance of the respondent who is entitled to support a decree in his favour even upon a ground found against him by the High Court, be permitted to be enlarged beyond that of the appeal before the High Court or the Courts below. But as it is a question of considerable importance and might be raised in other similar suits which are said to be pending, we propose to deal with it.

26. Before dealing with Raleigh Investment Co's case, 74 Ind App 50: (AIR 1947 PC 78) (supra), we may refer to the provisions of the Act which Mr. Sastri placed before us. Sec. 83(1) provides for an appeal against the assessment or levy of or refusal to refund any tax under the Act before the Deputy Commissioner and sub-s. (1-A) for a revision before the State Government. Sub-s. (2) provides that if the authority hearing the appeal or revision entertains a reasonable doubt on any question as to the liability to or the principles of assessment of a tax it shall draw up a statement of the facts of the case and the point on which the doubt is entertained and refer the statement with his own opinion on the point for the decision of the High Court. There is, however, no express provision like that of S. 31 (1) or S. 33 (4) of the Indian Income-tax Act entitling the assessee to a hearing either in the appeal or revision petition. Section 85 empowers the State Govt. to make rules for regulating the refund of taxes, and such rules may impose limitations on such refunds. Sub-section (2) thereof provides that no refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules made thereunder. This sub-section can be availed only if the Act or the rules provided for making a claim for refund. The rules relating to refunds, if there are any, were, however, not placed before us. Nor was our attention drawn to any provision of the Act or to any rule which makes it obligatory upon a person to apply to the Municipal Committee for a refund of a tax. Even assuming that the Act contemplates obtaining a refund only upon compliance with rules made thereunder, does it contemplate cases where refund or repayment on the ground of the constitutionality of the levy? It will be noticed that sub-s. (1) of this section, empowers the State Govt. to impose by rules limitations on the refunds-presumably

including limitation on the amount of refunds-and sub-s. (2) bars a claim for refund otherwise than in accordance with the rules made under sub-s. (1). These provisions cannot possibly apply to a case where the right to obtain a refund or repayment is based upon the ground that the action of the Committee was in violation of a constitutional provision. To hold otherwise would lead to the startling result that what was incompetent to the State Legislature to do or authorise a committee to do directly can be permitted to be done indirectly by empowering the State Govt. to make rules for refund whereunder the amount of refunds could be so limited as to permit retention by the committee of the tax recovered by it in excess of the constitutional limit. In our view, therefore, S. 85 of the Act cannot, in any event, be said to provide a machinery for obtaining refunds in cases of this kind. Since S. 85 is inapplicable, a fortiori S. 83 cannot apply either. We must therefore proceed on the footing that the Act does not provide a machinery for making a claim for refund or repayment in such cases.

27. It would be pertinent to advert also to the provisions of S. 84, sub-s. (3) of which deals with "Bar of other proceedings". Sub-s. (1) provides for the period of limitation for an appeal under S. 83 (1). Sub-s. (2) empowers the appellate authority to require the assessee to deposit the tax before the hearing or the decision of the appeal. Sub-s. (3) is in the following terms:

"No objection shall be taken to any valuation, assessment, or levy, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act."

It will be seen that there is no express mention of a civil court in this sub-section as there was in S. 67 of the Indian Income-tax Act, 1922. In fact S. 48 of the Municipalities Act contemplates the institution of a suit subject to fulfilment of certain conditions and thus indicates that it was not the intention of the legislature to make the machinery provided by the Act exclusive. But even if a bar to the jurisdiction of a civil court be assumed or implied, there is an absence of a reference to "refund" in sub-s. (3) of S. 83. In other words, no finality seems to have been given to a decision rendered by an authority under S. 83 refusing to refund a tax improperly or illegally assessed or recovered. In the light of these circumstances we have to consider the applicability of the decision in Raleigh Investment Co's case, 74 Ind App 50: (AIR 1947 PC 78) (supra). In that case the Privy Council considered the effect of certain provisions of the Indian Income-tax Act, 1922 which prescribed remedies to an assessee who sought to challenge the assessment made against him and also the provisions of S. 67. The relevant portion of S. 67 was that "no suit shall be brought in any civil court to set aside or modify any assessment made under this Act.....". After examining all these provisions the Privy Council said that an effective and appropriate machinery was provided by the Act itself for the review of any assessment on grounds of law, including the question whether a provision of the Act was ultra vires and it was in that setting that S. 67 had to be construed. Then it went on to say that the phrase "assessment made under this Act" in S. 67 meant an assessment finding its origin in an activity of the assessing officer acting as such and that the circumstance that he had taken into account an ultra vires provision of the Act was in that view immaterial in determining whether the assessment was "made under this Act." But, with respect, we find it difficult to appreciate how taking into account an ultra vires provision which in law must be

regarded as not being a part of the Act at all, will make the assessment as one 'under the Act.' No doubt the power to make an assessment is conferred by the Act and, therefore, making an assessment would be within the jurisdiction of the assessing authority. But the jurisdiction can be exercised only according, as well as with reference to the valid provisions of the Act. When, however, the authority travels beyond the valid provisions it must be regarded as acting in excess of its jurisdiction. To give too wide a construction to the expression "under the Act" may lead to the serious consequence of attributing to the legislature, which owes its existence itself to the Constitution, the intention of affording protection to unconstitutional activities by limiting challenge to them only by resort to the special machinery provided by it in place of the normal remedies available under the Code of Civil Procedure, that is, to a machinery which cannot be as efficacious as the one provided by the general law. Such a construction might necessitate the consideration of the very constitutionality of the provision which contains this expression. This aspect of the matter does not appear to have been considered in Raleigh Investment Co's case, 74 Ind App 50: (AIR 1947 PC 78) (Supra).

28. This decision has been briefly referred to by this Court in Firm of Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh, (1964) 1 SCR 752 at p. 764: (AIR 1964 SC 322 at p. 326), and what this Court has observed is this:

"In determining the effect of S. 67, the Privy Council considered the scheme of the Act by particular reference to the machinery provided by the Act which enables an assessee effectively to raise in courts the question whether a particular provision of the income-tax Act bearing on the assessment made is or is not ultra vires. The presence of such machinery observed the judgment, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to enquire into the same subject-matter. It is true that the judgment shows that the Privy Council took the view that even the constitutional validity of the taxing provision can be challenged by adopting the procedure prescribed by the Income-tax Act; and this assumption presumably proceeded on the basis that if an assessee wants to challenge the vires of the taxing provision on which an assessment is purported to be made against him, it would be open to him to raise that point before the taxing authority and take it for a decision before the Court under S. 66 (1) of the Act. It is not necessary for us to consider whether this assumption is well founded or not. But the presence of the alternative machinery by way of appeals which a particular statute provides to a party aggrieved by the assessment order on the merits, is a relevant consideration and that consideration is satisfied by the Act with which we are concerned in the present appeal."

We have already adverted to the provisions of Ss. 83 and 85 of the Act which are the only provisions brought to our notices as providing a machinery under the Act for challenging an assessment and we have pointed out that they do not cover a case like the present. Again the provision for an appeal before a Deputy Commissioner who is an authority who performs numerous functions under different laws, functions which are executive, as well as administrative and judicial cannot be regarded as on par with one which provides for an appeal before an Appellate Assistant Commissioner under the Income-tax Act, an authority whose duties are confined to matters arising under that Act. Further, the latter Act contains a safe-guard in the shape of an appeal to the Income-

tax Appellate Tribunal which deals exclusively with matters arising under that Act and is an independent tribunal. In the circumstances it must be held that even in the class of cases to which the provisions of Ss. 83 and 85 of the Municipalities Act apply they cannot be said to provide a sufficiently effective remedy to an assessee to challenge the assessment made against him or to a person who is aggrieved by the action of the Committee levying or refusing to refund a tax. It is true that Sub-s. (2) of S. 83 provides for a reference to the High Court but even that provision cannot be said to be a sufficiently efficacious remedy for challenging the assessment made on an assessee. For whether to make a reference or not is at the discretion of the appellate or revisional authority and the Act does not confer upon the person aggrieved a right to move the High Court, as does the Income-tax Act, to require a reference to be made in an appropriate case. We may again point out that there is a complete absence of a provision corresponding to S. 67 of the Indian Income Tax Act barring the institution of a suit in so far as refusal of refund of a tax is concerned.

29. In Secretary of State v. Mask and Co., 67 Ind App 222: (AIR 1940 PC 105), the Privy Council has observed that it is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. As earlier pointed out, this decision has been approved by this Court in the case of Firm of Illuri Subbayya Chetty and Sons, (1964) 1 SCR 752: (AIR 1964 SC 322) (Supra). Further, one of the corollaries flowing from the principle that the Constitution is the fundamental law of the land is that the normal remedy of a suit will be available for obtaining redress against the violation of a constitutional provision. The Court must, therefore, lean in favour of construing a law in such a way as not to take away this right and render illusory the protection afforded by the Constitution. So, whatever be the position with respect to S. 67 of the Indian Income-tax Act, so far as S. 83 (3) of the Act is concerned, we find it reasonably possible to construe it as not depriving a person of his right to obtain redress from a civil court in respect of an amount recovered from him as a tax in violation of Art. 276 of the Constitution.

30. We have already pointed out that no machinery is provided by the Act for obtaining a refund of tax assessed and recovered in excess of the Constitutional limit and that the machinery actually provided by the Act is not adequate for enabling an assessee to challenge effectively the constitutionality or legality of assessment or levy of a tax by a municipality or to recover from it what was realised under an invalid law. It is, therefore, not possible to infer that the jurisdiction of the civil court is barred. The decision in the Raleigh Investment Co's case, 74 Ind App 50: (AIR 1947 PC 78) (supra) does not, therefore, help the respondent. Moreover, we must bear in mind the provisions of the Art. 265 of the Constitution which preclude the levy or collection of a tax except by authority of law, which means only a valid law. There was no corresponding provision in the various Acts for the governance of India which preceded the Constitution. Under Art. 226 of the Constitution has provided a remedy to a citizen to obtain redress in respect of a tax levied or collected under an invalid law. This remedy will not be affected by any provision like S. 67 of the Indian Income-tax Act or like S. 84 (3) of the Municipalities Act.

31. We must not lose sight of the fact that what the appellant has claimed in the suit is the repayment by the Municipal Committee of an amount recovered by it in excess of that which under

the Constitution it was competent to recover from the appellant. The appellant has not sought to modify or set aside any order made by an authority acting or purporting to act under the Act. No doubt, the relief of repayment is claimed on the ground that the enhancement of the rate is unconstitutional. No doubt also that the appellant had sought a further relief of injunction. As regards the first, the position is that the High Court of Nagpur has held, in the petition under Art. 226 preferred by the appellant, the enhancement to be unlawful. This decision was rendered by the Court during the pendency of the suit and was binding on the civil Court in which the suit was pending and has been in fact followed by it. As regards the relief of injunction, that relief became unnecessary because of the order made by the High Court in the Writ petition. It is apparently for this reason that the civil Court did not award that relief to the appellant. In view of the High Court's decision it was not at all necessary for the trial Court to consider in the suit before it the question of the validity of the assessment by or collection of the tax but only to ascertain the amount which was payable to the appellant and whether the suit was barred under S. 48 or S. 85 (2) as contended by the respondent. In these circumstances, we are of opinion that the appellant's suit cannot be said to be barred even if we interpret S. 84 (3) of the Municipalities Act in the same way as the Privy Council interpreted S. 67 of the Indian Income-tax Act.

32. We may further observe that where there is an express prohibition in a statute against a local authority from imposing a tax, as for instance, the recovery in the Statute construed by this Court in the Poona City Municipal Corporation case, C. A. No. 582 of 1961, dated 5-5-1964: (AIR1965 SC 555) (supra) or where a prohibition can be implied-whether it be with regard to an item of taxation or with regard to the rate of tax or the quantum of tax payable by an individual assessee-the action of a local authority or of any of its instrumentalities in transgressing that prohibition must be regarded as being in excess of its jurisdiction. Here there is a prohibition in S. 142-A of the Government of India Act and now in Art. 276 of the Constitution, which precludes a State Legislature from making a law enabling a local authority to impose a tax on "professions, trades, calling and employments" in excess of Rs. 250 per annum. These provisions have to be read in the Act or to be deemed by implication to be there as the Constitution is the paramount law to which all other laws are subject as was the Government of India Act, 1935 before January 26, 1950. If, therefore, after the date specified in S. 142-A of the Government of India Act or after the commencement of the Constitution a local authority or any of its instrumentalities imposed or imposes a tax which is in excess of the permissible amount, it would be exceeding its jurisdiction and a provision like S. 84 (3) of the Act will not bar the jurisdiction of a civil Court to entertain a suit instituted by a person from whom it is collected for the repayment of the money recovered from him in excess of the permissible amount. There is a real distinction between those cases where a suit was held to be incompetent and the kind of cases which we have before us. Thus where the question merely is, whether the assessment had been made according to law, the Assessing Officer of the Municipality having jurisdiction on the subject-matter and over the assessee the provisions of S. 84 (3) may be a bar to a suit. Where, however, the question raised is as to the jurisdiction of the Assessing Officer to proceed against the assessee and levy on or collect from him an amount in excess of that permitted by the Constitution, the matter would be entirely out of the bar of that provision. Here since the Assessing Officer had no authority to levy a tax beyond what S. 142-A of the Government of India Act, 1935 permitted or what Art. 276 permits his proceedings are void in so far as they purport to levy a tax in excess of the permissible amount and authorise its collection and the assessment order is no answer to the suit for the recovery of the excess amount. To this extent, even the order of assessment cannot obtain the protection of S. 84 (3) of the Act and, therefore, the appellant's suit is maintainable.

33. For all these reasons we hold that the High Court was in error in dismissing the appellant's suit. We hold the same in the connected appeal and accordingly allow both the appeals with costs throughout.

The judgment of Raghubar Dayal and R. S. Bachawat, JJ. was delivered by

34. **RAGHUBAR DAYAL, J.:**

We have given careful thought to the questions of law arising in this appeal, but regret we have not been able to agree with the view expressed by brother Mudholkar, J. in the majority judgment.

35. We need not recapitulate the facts which have been fully set out in the judgment of Mudholkar, J. The questions of law which arise for determination are: (i) whether the respondent's collecting the amount in excess of the amount which it could have collected on account of the tax on trade, in view of the provisions of Art. 276 of the Constitution, was 'an act done or purported to be done under the Act' within the meaning of S. 48 (1) of the Central Provinces and Berar Municipalities Act, 1922 (Act II of 1922), hereinafter called the Act; and (ii) whether the suit is barred by S. 84 (3) of that Act.

36. The question in short boils down to this: whether the expression 'anything done or purporting to be done' under the Act will cover only those acts which would be in strict conformity with the provisions of the Act or will also cover such acts which the Municipal Committee is competent to do under the Act, but in doing which the Committee has, in some manner, acted beyond the provisions of the Act or beyond any other legal provision.

37. Section 48 of the Act refers to suits against the Committee or any of the other specified persons acting under the directions of the Committee, for anything done or purported to be done under the Act. If a suit is for anything done or purported to be done under the Act, the necessary conditions laid down in the section are to be satisfied before the institution of the suit. One condition is that the suit is to be instituted after the expiration of two months after the service of a notice, in writing, to the persons mentioned in sub-s. (1). Another is that that suit be instituted within six months from the date of accrual of the alleged cause of action. If a suit is not instituted after giving notice or within this period, it has to be dismissed.

38. The question then is: what is the present suit for? And it is only on the determination of the nature of the act to which the present suit relates that it can be said whether the suit is covered by S. 48 or not, i.e., whether the act can be said to be done or purported to be done under the Act.

39. The plaintiff claims decree for the amount alleged to have been illegally collected from him as tax and for a permanent injunction. The illegality of the collection is said to be on account of there being an upper limit for a person's liability to tax on trade and calling, in view of S. 142-A of the Government of India Act, 1935 (shortly referred to as the 1935 Act) and Art. 276 of the Constitution. The limit under the Constitution is Rs. 250. It was Rs. 50 under the 1935 Act. What was collected from the appellant was the tax assessed on him. According to the appellant, the amount assessed exceeded the legal limit and, therefore, what had been collected in excess of that limit was collected illegally.

40. We may now consider the procedure laid down for the collection of tax under the Act before we determine the nature of the alleged excessive collection of tax from the appellant. Section 66 empowers the Committee to impose the taxes enumerated in sub-s. (1). Clause (b) of sub-s. (1) mentions a tax on persons exercising any profession or art, or carrying on any trade or calling, within the limits of the municipality. Sub-section (2) empowers the State Government, by rules made under the Act, to regulate the imposition of taxes mentioned in the section and to impose maximum amounts of rates for any tax. The rate of tax fixed by Government Notification, dated December 22, 1936 was enhanced by another Notification, dated April 10, 1941. The former rate of one anna was enhanced to four annas. These notifications did not lay down any upper limit for the amount of tax payable by one person to the Municipality. The legality of the imposition is not questioned. The legality of the enhancement was questioned by the appellant through Miscellaneous Petition No. 389 of 1954, decided by the High Court on April 12, 1955. The appellant prayed, by that petition, for the issue of a writ prohibiting the Committee from collecting taxes under the notification of 1941. The High Court did not hold the notification to be bad in law. What it held was that the tax was invalid to the extent it offended against S. 142-A of the 1935 Act and that it was also invalid to the extent it offended against Art. 276 of the Constitution. The writ issued by the High Court was a writ of mandamus prohibiting the Municipality from resorting to the 1941 Notification for the purpose of collecting tax in excess of Rs. 250 per annum. The Municipality, therefore, was empowered to impose tax in accordance with the notification of 1941 and, in view of S. 142-A of the 1935 Act and Art. 276 of the Constitution, the total tax claimable on account of this tax from the appellant could not exceed Rs. 50 or Rs. 250, respectively, during the period when S. 142-A was in force and later when Art. 276 came into force.

41. The next step, after the imposition of a valid tax, according to the Act, relates to the assessment of tax on the person's liability to pay it. Section 71 empowers the State Government to make rules under the Act regulating assessment of tax and for preventing the evasion of assessment and S. 76 empowers the State Government to make rules regulating the collection of taxes. The rules for assessment and collection of taxes framed in 1936 notified on December 22, 1936.

42. Rule 1 required a person carrying on the trade of ginning or pressing cotton into bales by means of steam or mechanical process to furnish to the Committee, annually, a return in the prescribed form which required the furnishing of the number of bojhas ginned and the number of bales pressed, with the total weight in maunds during the financial year in each case. This information was necessary as the rate of tax related to a bojha of 392 lbs. ginned cotton and a bale of 392 lbs. pressed cotton.

43. Rule 4 provided that the tax would be assessed by a sub-committee on the basis of the information received under certain rules including R. 1. Rule 5 required the communication of the amount of assessment to the assessee. Rule 6 provided that objections to the assessment would be received and considered by the sub-committee if presented within a month from the date of communication of the amount of assessment to the assessee and that the decision of the sub-committee would be final subject to the confirmation by the general committee. Rule 7 provided that the tax would be payable in one instalment on August 1, each year. Fresh rules were notified in 1941 and these were practically identical with the 1936 rules.

44. It is not alleged that the tax assessed on the appellant during the periods in suit had not been assessed by following the procedure laid down in the rules.

45. It follows from the statutory rules that once the tax is assessed according to the rules, the assessee becomes liable statutorily, to pay the assessed tax.

46. Section 77 provides how any arrears of tax claimable by the Committee under the Act can be recovered. They can be recovered on an application to a Magistrate, by distress and sale of movable property of the defaulter within the limits of his jurisdiction. Sections 77A and 80 provide other procedure for arrears of certain taxes to be realised.

47. Section 83 provides for an appeal, against the assessment or levy of or refusal to refund any tax under the Act, to the Deputy Commissioner or some other officer empowered by the State Government in that behalf. Sub-section (1A) allows a person aggrieved by the decision of the appellate authority to apply to the State Government for revision of the decision on the grounds that the decision is contrary to law or is repugnant to any principle of assessment of tax or that the appellate authority has exercised jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law. Sub-section (2) provides for a reference to the High Court by the appellate authority or the revisional authority on its own motion or on the application of any person interested, for the opinion of the High Court on any question as to the liability or the principle of assessment of tax if such a question arises on the hearing of the appeal or revision. Sub-section (3) of S. 84 provides:

"No objection shall be taken to any valuation, assessment, or levy, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act."

Section 85 reads:

"(1) The State Government may, make rules under this Act regulating the refund of taxes, and such rules may impose limitations on such refunds.

(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules made thereunder."

It follows from the above provisions that an assessee has to pay the tax assessed and that if aggrieved with the assessment of tax he has to appeal against the assessment order. He can raise questions of law and fact in the appeal.

48. The appellant, in the present case, could have appealed against the assessment on the ground that the amount assessed exceeded the limits laid down for the tax under S. 142-A of the 1935 Act if that applied at the time of assessment or under Art. 276 of the Constitution if the latter applied at the relevant time. His claim for the refund of any amount, if paid, would arise only after the amount assessed and paid is modified by the appellate or revisional authority. If the amount is not so modified, no question for the refund or repayment of any amount paid as tax under the Act arises. The statute provided for the assessment of tax and for its collection in case the assessee did not himself pay the assessed amount according to the rules. The present suit for the repayment of the amount alleged to have been realised illegally is in essence a suit for firstly modifying the amount assessed and then to decree the payment of the amount held to have been paid in excess of the tax as modified by the Court. It follows, therefore, to our mind, that the suit relates to the act of the Committee in assessing the appellant wrongly by ignoring the constitutional provision that the amount payable by a single person to the municipality for such tax was not to exceed a certain limit and that it is not merely with respect to the act of collecting the excess amount. In fact, the assessment of the entire tax was one act and so was the collection of the amount assessed. The act of assessing the tax or the consequential act of collecting the amount cannot be broken up into two acts: (i) of assessing the tax upto the legal limit and (ii) of assessing the tax with respect to the amount in excess of the legal limit. Neither can the act of collection be broken up into two acts: (i) of collecting the amount which can be legally assessed; and (ii) of collecting the amount in excess of the legally realisable amount of tax. The act of assessment or of collection, therefore, was an act done by the Committee under the provisions of the Act, though it may be, as appears to be the case, that it acted wrongly in assessing the tax at an excessive figure and consequently in collecting an amount in excess which could have been legally collected. The suit is, therefore, fully covered by the provisions of sub-s. (1) of S. 48 of the Act.

49. Sub-section (2) of S. 48, as already stated, provides that every such suit, i.e., a suit falling within sub-s. (1) of that section, shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action. The suit was instituted in the instant case on December 6, 1952, more than 8 months after the date of recovery of most of the amounts alleged to have been illegally recovered from the appellant and, clearly, the suit for the recovery of such amount had to be dismissed.

50. The taxes for the years, 1951-52 were recovered in small amounts on January 17, 1952, March 13, 1952, March 31, 1952 and August 27, 1952. The suit for the amount recovered on January 17 was also instituted after the period of limitation.

51. No notice with respect to the alleged illegal collection of taxes in March and August 1952 had been given to the Municipal Committee as notice was given on January 10, 1952, prior to those collections and could not have possibly referred to them. The suit for these amounts also has to be dismissed as the condition precedent for the institution of the suit under sub-s. (1) of S. 48 has not been satisfied.

52. There is another reason which justifies the dismissal of the appellant's suit, though the view of the High Court on that point is in favour of the appellant. In view of S. 84 (3) the assessment of the tax or the liability of the person assessed or taxed cannot be objected to in any manner or before any authority other than what is provided in the Act. Section 83 provides the procedure by which the assessment of tax can be questioned both on law and facts. The correctness of the assessment cannot be questioned by any other manner and questioning by instituting the suit in a civil Court would be one such other manner. We have already indicated that in essence the present suit is a suit for the modification of the taxes assessed and for consequential order decreeing the repayment of the amount held to have been collected in excess of the amount so modified. In view of sub-s. (3) of S. 84, exclusive jurisdiction to determine the correctness of the amount assessed is given to the authorities mentioned in S. 83. The result is that no other authority can enter into the question of the correctness of the assessment on grounds of law or fact. The present suit is barred from the cognizance of the Civil Court.

53. The views we have expressed find support from what has been decided by the Privy Council and this Court. We would first refer to those cases before dealing with the cases relied on for the appellant in support of the contention that the Committee had no jurisdiction to assess the tax beyond the limit allowed by S. 142-A or Art. 276 and that, therefore, the act of the Committee was an act which could not be said to have been done or purported to have been done under the Act and that it was not necessary for the appellant to take recourse to the procedure laid down in Ss. 48 and 83 of the Act.

54. In 74 Ind App 50: (AIR 1947 PC 78), the Privy Council had to construe S. 67 of the Income-tax

Act which provided: 'no suit shall be brought in any civil Court to set aside or modify an assessment made under this Act. . . .' The suit giving rise to the appeal before the Privy Council was for a declaration that certain provision of the Act was ultra vires the legislative powers of the Federal Legislature, that, therefore, the appellant before the Privy Council was not liable to be assessed or charged to tax in respect of certain dividends and the assessment was illegal and wrongful, for an injunction restraining the department from making assessment in future years in respect of such dividends and for the repayment of the amount said to have been illegally realised on account of the illegal assessment. The Privy Council said at p. 62 (of Ind App): (at p. 80 of AIR).

"In form the relief claimed does not profess to modify or set aside the assessment. In substance it does, for repayment of part of the sum due by virtue of the notice of demand could not be ordered so long as the assessment stood."

The same can be said with respect to the claim for repayment of the alleged illegal collection of the excess amount from the appellant.

55. The Privy Council further said:

"An assessment made under the machinery provided by the Act, if based on a provision subsequently held to be ultra vires, is not a nullity like an order of a Court lacking jurisdiction. Reliance on such a provision is not an excess of jurisdiction but a mistake of law made in the course of its exercise."

In view of what the Privy Council has said, the Committee's overlooking the constitutional provisions in the exercise of its jurisdiction to assess the tax will not make its assessment of the tax an assessment without jurisdiction but would only show that the Committee made a mistake of law in the course of the exercise of its jurisdiction.

56. The Privy Council took into consideration the machinery provided in the Income-tax Act for the assessee raising objections to the assessment made against him and held that effective and proper machinery was provided by the Act itself for the review on grounds of law. This was, however, not the reason for their construing S. 67 in the way they did. In fact, they considered the construction of S. 67 clear and said:

"Under the Act the income-tax officer is charged with the duty of assessing the total income of the assessee. The obvious meaning, and in their Lordships' opinion, the correct meaning, of the phrase 'assessment made under this Act' is an assessment finding its origin in an activity of the assessing officer acting as such. The circumstance that the assessing officer has taken into account an ultra

vires provision of the Act is in this view immaterial in determining whether the assessment is 'made under this Act'. The phrase describes the provenance of the assessment: it does not relate to its accuracy in point of law. The use of the machinery provided by the Act, not the result of that use, is the test."

These observations fully apply to the expression 'the assessment of any tax under the Act' in sub-s. (1) of S. 83. It follows that when the Committee made the assessment of the tax on the appellant the assessment was founded on the activity of the Committee acting as the assessing authority and the fact that it overlooked the constitutional requirement is immaterial in determining whether the assessment is made under the Act. The expression 'made under the Act' has no relation to the accuracy of the assessment in point of law. The expression 'assessment of any tax under the Act' in S. 83 is equivalent in its content to the expression 'assessment made under the Act'.

57. Lastly, the final observations of the Privy Council in this case indicate that when an exclusive machinery for the determination of the tax is provided by the Act and the tax is assessed by that machinery, there arises a duty to pay the amount of tax demanded on the basis of that assessment and that the jurisdiction to question the assessment otherwise than by the use of the machinery expressly provided by the Act would be inconsistent with the statutory obligation to pay arising by virtue of the assessment. The very fact that the appellant let the assessment become final without taking recourse to the procedure of appeal and revision laid down in S. 83 of the Act and thus became liable under the statute to pay the amount assessed, makes his questioning the correctness of the amount through the Court inconsistent with that obligation. It appears that the Privy Council considered a special provision barring the taking of objection to assessment of tax by any authority to be unnecessary. It said at p. 65 (of Ind App): (at p. 81 of AIR):

"The only doubt, indeed, in their Lordships' mind, is whether an express provision was necessary in order to exclude jurisdiction in a civil Court to set aside or modify an assessment."

This would meet the contention for the appellant that sub-s. (3) of S. 84 does not specifically refer to the civil Court and, therefore, does not specifically bar jurisdiction of the civil Court from taking cognizance of a suit relating to the assessment of tax.

58. It may also be mentioned that Section 84 (3) of the Act, by its terms, refers to an objection to assessment and not to 'assessment under the Act or assessment made under the Act'. This makes the provisions of S. 84 (3) much wide in scope than those of S. 67 of the Indian Income-tax Act were.

59. The other case we would refer to is (1964) 1 SCR 752: (AIR 1964 SC 322). The appellant before this Court, in that case, sued the State of Andhra Pradesh for a decree for a certain amount on

the ground that that amount had been illegally recovered from it under the Madras General Sales Tax Act, 1939. Section 18A of that Act provides that no suit or other proceeding shall, except as expressly provided in the Act, be instituted in any Court to set aside or modify an assessment made under the Act. This provision is practically identical in terms with that of S. 67 of the Income-tax Act which had been considered by the Privy Council in Raleigh's case, 74 Ind App 50: (AIR 1947 PC 78). The contention raised before the Court was that if an order of assessment had been made illegally by the proper authority purporting to exercise its powers under the Act, such an assessment could not be said to be an assessment made under the Act. It was also contended that the use of the words 'any assessment made under this Act' did not cover cases of assessment which purported to have been made under the Act. This Court said at p. 759 (of SCR): (at p. 324 of AIR):

"The expression 'any assessment made under this Act' is, in our opinion, wide enough to cover all assessments made by the appropriate authorities under this Act whether the said assessments are correct or not. It is the activity of the assessing officer acting as such officer which is intended to be protected and as soon as it is shown that exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment that clearly falls within the scope of S. 18A."

The view expressed by this Court is practically the same as had been expressed in Raleigh's case, 74 Ind App 50: (AIR 1947 PC 78). In fact, the only difference between the two cases appears to be that in the Privy Council case the illegality of the assessment was said to lie in basing the assessment on a provision which was said to be ultra vires the legislature while the illegality of the assessment made in the case before this Court lay in the alleged mistake of the assessing officer in construing certain transactions to be transactions of purchases though they were really transactions of sale, the tax being leviable on purchases and not on sales. This Court referred to Raleigh's case 74 Ind App 50: (AIR 1947 PC 78) at p. 764 (of SCR): (at p. 326 of AIR) and did not express an opinion on the view of the Privy Council that even the constitutional validity of the taxing provision could be challenged by adopting the procedure prescribed by the Income-tax Act, a question which does not arise for consideration in the present case.

60. We are therefore, of opinion that the construction put on the expression 'assessment made under the Act' in these two cases justifies the conclusion that the assessment of tax made on the appellant in this case is covered by sub-section (1) of section 83 of the Act and amounts to 'an act done under the Act' for the purposes of sub-section (1) of section 48 of the Act. It is, therefore, unnecessary to determine the scope of the expression 'an act purported to be done under the Act' in sub-section (1) of section 48.

61. We may now briefly deal with the cases relied on for the appellant.

62. Before, however, doing so, we may first deal with the case of CA No. 582 of 1961 dated 5-5-1964: (AIR 1965 SC 555), decided by this Court. In this case the Poona Municipality had imposed a tax on the amount of octroi duty which had been levied on the goods imported within the Municipal limits but had been subsequently exported out of such limits within the specified periods. The Poona

Municipality used to deduct 10 per cent of the amount to be refunded. This deduction was held to amount to a tax on the octroi refund. Such a deduction was imposed as a tax under section 59 (b) (xi) of the Act III of 1901. The tax continued after the 1901 Act was repealed by the Bombay Municipal Boroughs Act, 1925. The Boroughs Act was, in its turn, repealed by the Bombay Provincial Municipal Corporation Act, 1949. That Act was applied to Poona on February 15, 1950 and thereafter the powers of taxation of the Municipality were governed by S. 127 of that Act which authorised the Corporation to impose the various taxes mentioned in that section. A tax on octroi refund was not one of such taxes. It could not come under Cl. (f) which described: 'any other tax which the State Legislature has power under the Constitution to impose in the States'. The State Legislature had no power under the Constitution to impose a tax on octroi refund. It was, therefore, held by this Court that the amount of tax on octroi refund could not be imposed by the Poona City Municipal Corporation. It was, after holding so, that reference was made to sub-s. (4) of S. 127 which provided that nothing in that section would authorize the imposition of any tax which the State Legislature had no power to impose in the State under the Constitution, and it was said:

"Apart from this absence of power to impose such a tax, which is clear from the earlier parts of S. 127, we have the categorical prohibition in sub-s. (4) against the imposition of any such tax by the Corporation."

This reference was to emphasize that the impugned tax could not possibly be imposed under the Act. Sub-section (4) appears to have been enacted as a matter of caution. There could be no necessity for sub-s. (4) as S. 127 itself had provided for the taxes which could be imposed. Any tax which was not specified in the section could not possibly be imposed by the Corporation. The legislature might have considered the possibility of any of the specified taxes not remaining in future within the legislative list of the State and, therefore, provided that in such a contingency a tax though specified in the section will not be imposed. The provision of sub-s. (4) did not in any way affect the decision of this Court in holding that the Poona Municipal Corporation could not impose a tax on octroi refund.

63. The other contention for the Poona Municipal Corporation was that the suit was instituted beyond the period of limitation prescribed under S. 487 of the 1949 Act. The suit would have been time-barred if the act of the Corporation imposing the tax on octroi refund could be held to be 'an act done or purported to be done in pursuance or in execution or intended execution' of the 1949 Act. This Court held that the tax was not levied in pursuance or in execution of the Act and, therefore, the benefit of S. 487 could not be available to the Corporation.

64. The expression used in S. 487 is different from the one used in S. 48 of the Act. Apart from this consideration, the act of imposing the tax could not be said to have originated from any provision of the 1949 Act and, therefore, could not possibly be held to be an act done under the 1949 Act. We do not think this case can be taken to support the appellant's contention that the assessment of the tax on it and the consequential collection of the amount in excess of the limit laid down by the Art. 276

of the Constitution was not an act done under the Act.

65. The appellant has mainly relied on the cases decided by the Nagpur High Court and a brief reference may now be made to them. We may refer to the case reported as ILR 1939 Nag 216: (AIR 1938 Nag 455), first. The plaintiffs had sued to recover the tax which had been collected from them in excess of the lawful rate. The suit was instituted after the plaintiffs had obtained a declaration that the enhancement of the tax over that rate was illegal. The Municipal Committee had power to impose and enhance the tax. It, however, had enhanced the tax without following the entire procedure laid down for such enhancement and had omitted to consider the objections filed against the proposed enhancement. The question before the High Court was whether the collection of the tax at the enhanced rate was an act which fell within the ambit of the expression 'anything done or purported to be done under the Act' which Act, it may be mentioned, was the C. P. and Berar Municipalities Act, 1922, the very Act with which we are concerned in the present appeal. Niyogi, J., expressed at p. 219 (of ILR Nag): (at p. 457 of AIR), his agreement with the principle that if the Municipal Committee exercised a power which it did not possess, it should not be regarded as acting in pursuance of the statute governing its affairs and its acts should not be regarded as being done under the statute, and further stated that that principle, however, did not help the Municipal Committee, the appellant before him. Niyogi, J., then said, after noticing the failure of the Municipal Committee to consider the objections to the proposed taxes:

"Now there can be no question that the municipal committee, in imposing and collecting tax at four annas per animal, was acting exactly in accordance with S. 68. It must be observed that there is a difference between a case when a corporate body exercises a power which is wholly absent and a case where it has power but it exercises it illegally or with material irregularity. In the former case the municipal committee's act from beginning to end is illegal; whereas in the latter case the act is quite legal in the beginning but becomes illegal in the end."

again he said:

"In enhancing the tax and collecting it the municipal committee was certainly exercising although irregularly, the power conferred on it by S. 68 and to that extent it appears to me that the contention that they were not acting under the statute is untenable."

66. The views expressed by Niyogi, J., we may say with respect, find full support from Raleigh's case, 74 Ind App 50: (AIR 1947 PC 78) and Subbayya Chetty's case, (1964) 1 SCR 752: (AIR 1964 SC 322). Amraoti Municipal Committee's case, ILR (1939) Nag 216: (AIR 1938 Nag 455), was in a way on all fours with the present case. In that case the Municipal Committee over looked the provision of law about considering the objections to the proposed enhancement in tax. In the present case the Committee overlooked the constitutional requirement that the maximum limit of the tax payable by a single individual is Rs. 250.

67. The next case is ILR 1949 Nag 87: (AIR 1949 Nag 190). In this case the question before Bose, J., was whether a suit for the recovery of an amount recovered in excess of what could be legally taxed came within the mischief of S. 71 and S. 73 (1) of the Central Provinces Local Self-Government Act, 1920 (C. P. IV of 1920). Bose, J., said at p. 92 (of ILR Nag): (at p. 192 of AIR):

"It will be observed that both S. 79 and the rule are confined to orders and decisions given under the Act. It is impossible to say that an order which contravenes the law or is made in the face of an express statutory prohibition can be said to be under the Act. The words 'purporting to be given' or 'made under the Act' are not present in this section and so the difficulty which arises regarding the other point is not present here."

We do not see why an ordinary decision given under the Act be not considered to be an order made under the Act. Neither of the expressions refer to the order or decision being correct or not.

68. Section 73 of the Central Provinces Local Self-Government Act prescribed that no suit shall be instituted, etc.....for anything done or purporting to be done under that Act, unless the prescribed notice be first given. Bose, J., presumably in view of what he had said earlier in connection with orders and decisions given under the Act, said:

"I am clear that what was done here was not done 'under the Act', so the only question is whether it 'purported to be done' under the Act".

In these observations he seems to have equated the expression 'given under the Act' with 'done under the Act'. His view, as we have already pointed out with reference to something done under the Act, does not find support from Raleigh's case, 74 Ind App 50: (AIR 1947 PC 78) and Subbayya Chetty's case (1964) 1 SCR 752: (AIR 1964 SC 322). Bose, J., then considered the content of the expression 'purported to be done'. We need not discuss what he says on this point as we have held that the assessment made on the appellant was an assessment made under the Act and that the act of illegal collection with respect to the amount in excess was an act done under the Act.

69. The appellant mainly relied on the Nagpur case reported as ILR (1948) Nag 971: (AIR 1949 Nag 215). It was held in that case that a suit for refund of a tax illegally imposed by the Municipal Committee was not barred by reason of Ss. 48, 83 and 84 of the Central Provinces Municipalities Act as the Municipal Committee did not act or purport to act under the Act in imposing the illegal tax. Bose, Acting C. J., delivering the judgment, relied on his earlier decision in District Council, Bhandara case, ILR 1949 Nag 87: (AIR 1949 Nag 190), and held that the claim for the recovery of the tax illegally realised in excess of the permissible limit were not barred by reason of Ss. 83 and 84. He then referred to S. 48 and, after stating that the act of the Municipality when prohibited by

law was wholly beyond its jurisdiction and, therefore, S. 48 did not apply, said:

"The distinction between a case where S. 48 applies and a case where it does not is clearly shown in ILR 1939 Nag 216: (AIR 1938 Nag 455)."

We have referred to this case and expressed full agreement with the views expressed by Niyogi, J. there. It appears to us that the full significance of that judgment has been overlooked in Municipal Committee, Karanja case, ILR (1948) Nag 971: (AIR 1949 Nag 215).

70. We hold that the appellant's suit for the recovery of the tax realised in excess of Rs. 250 a year has been rightly dismissed as the correctness of the assessment of the tax could not be challenged by a suit in a civil Court in view of S. 84 (3) and as the provisions of S. 48 requiring the giving of notice to the Municipality and the institution of the suit within a certain period had not been complied with. We would, therefore, dismiss the appeal with costs.

ORDER

71. In view of the majority Judgment, the appeal is allowed with costs throughout.

Appeal allowed.